



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1998

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR98-1992

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 117392.

The City of Dallas Police Department (the "department") received a request for information concerning offense report 0355463 and the arrest of several individuals, as well as "any police records on [the requestor]." In response to the request, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the

information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under 552.103(a).

You state that “[c]harges have been filed against [the requestor] for manufacturing and delivering cocaine; the case is set for grand jury,” and “similar charges are expected to be filed against the remaining . . . individuals.” You assert that “[a]s the requested file contains information which pertains to reasonably anticipated criminal litigation, the documents should be withheld pursuant to Section 552.103.” In this instance, based on your representations, we conclude that litigation is pending or reasonably anticipated and the documents submitted by the department are related to the litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information.¹ Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, you may not release information made confidential by section 552.101 or other law, even after the litigation has concluded.

As we resolve your request under section 552.103, we need not specifically address your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

¹We note that generally front page incident report information may not be withheld from disclosure under section 552.103. See Open Records Decision No. 597 (1991). We also note that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure under § 552.108. Gov’t Code § 552.108(c).

SH/mjc

Ref: ID# 117392

Enclosures: Submitted documents

cc: Ms. Jeanne Ross
910 Green Canyon
Mesquite, Texas 75150
(w/o enclosures)